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House of Representatives

Transcript of Proceedings

COMMITTEE ON THE POST OFFICE AND CIVIL SERVICE

SUBCOMMITTEE ON POST OFFICE SAFETY

HEARINGS

LEGISLATION DEALING WITH THE UNION OF

FEDERAL EMPLOYEES

H.R. 7199, H.R. 7200, H.R. 7201

Washington, D. C.
Tuesday, May 11, 1964

ACE - FEDERAL REPORTERS, INC.

Official Reporters

415 Second Street, N.E.
Washington, D. C. 20002

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Hearings on
LEGISLATION DEALING WITH INVASION OF
FEDERAL EMPLOYEES' PRIVACY
H.R. 7100, H.R. 220, H.R. 7969

Tuesday, May 11, 1971

U. S. House of Representatives,
Subcommittee on Employee Benefits
of the Committee on Post Office
and Civil Service,

Washington, D. C.

The Subcommittee met at 9:40 o'clock a.m. in Room 213,
Cannon House Office Building, the Honorable James M. Hanley,
Chairman of the Subcommittee, presiding.

Present: Representatives James M. Hanley, Frank J.
Brasco, Charles H. Wilson, Richard C. White, Lawrence J.
Hogan.

Mr. Hanley. Friends, we convene this morning for the
purpose of initiating hearings on a rather important subject,
one that has been the subject of a great deal of discussion
here on the Hill for the past several years now. You are
aware of the Senate activity in this regard and the previous
House activity. So the purpose of these hearings as far as
the House is concerned is to hopefully air the lines.

MBB3

1 Congress on the invasion of privacy of Federal employees for
2 almost three years. Pending before the Subcommittee are several
3 measures which would in varying degrees outlaw inquiry into
4 the personal life and background of employees or applicants for
5 employment. In addition, most of these bills would also pre-
6 vent coercion to participate in bond drives, charitable drives,
7 or political campaigns.

8 The principal measures which we will consider today are
9 H.R. 7199 sponsored by Representative Charles Wilson of California
10 and H. R. 7969 sponsored by Representative Nick Galifianakis.
11 The latter bill is identical to a bill currently pending in the
12 Senate, S. 1438, sponsored by Senator Ervin, who has been the
13 principal sponsor of this type of legislation during the past
14 three Congresses.

15 In this age of computer technology and sophisticated methods
16 of surveillance, the question of privacy has indeed become an
17 important one. Federal employees, too, are citizens of the
18 United States and deserve the full protection of the Constitu-
19 tion in the areas of their private lives which do not affect
20 their work for the Federal Government. We hope during these
21 hearings to pinpoint the problems facing many Federal employees
22 and provide, hopefully, corrective legislation.

23 (The bills follow:)

1 Mr. Hanley. Our first witness today is Representative
2 Charles Wilson, a distinguished Member of our Subcommittee.
3 Representative Wilson has been a leader in the invasion of
4 privacy field as far as Federal employees are concerned for a
5 number of years. We are privileged to have such a distinguished
6 witness begin our hearings.

7 So nice to have you aboard, Charlie.

8 STATEMENT OF THE HONORABLE CHARLES H. WILSON, .
9 REPRESENTATIVE IN CONGRESS OF THE UNITED STATES FROM
10 THE THIRTY-FIRST DISTRICT OF THE STATE OF CALIFORNIA;
11 ACCOMPANIED BY MR. GEORGE GOULD, STAFF DIRECTOR.

12 Mr. Wilson. Thank you very much, Mr. Chairman.

13 I want to compliment you for conducting hearings on this
14 very important subject. Senator Ervin has been quite active,
15 as you know, for several years on the other side and has been
16 successful on that side with legislation he has introduced and
17 sponsored.

18 We have had difficulty finding the time in our Subcommittee
19 in the past to give serious consideration to his legislation.
20 I think it is important and commendable that you have been
21 able to fit into your very busy Committee schedule this subject.

22 Mr. Chairman, it is urgent that Congress pass my legis-
23 lation, H.R. 7199, to protect the constitutional rights of
24 Federal employees.

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Executive departments and agencies have invaded the rights

MBE5

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1 of employees in a number of ways which have been brought out in
2 the course of Congressional investigation.

3 Federal employees have been compelled to disclose their
4 race, religion, and ethnic or national origin. In 1966 more
5 than one million Federal employees were made to complete a
6 questionnaire stating whether they were "American Indian,"
7 "Oriental," "Negro," "Spanish American," or "none of these."
8 Admittedly, the purpose of this census was to measure the
9 success of Federal equal employment policy. But there is a
10 difference between making employees respond to such a question-
11 naire and merely conducting a survey. In the former case it
12 is a matter of personal information which the employee is
13 compelled to disclose about himself; in the latter case we
14 have information recorded in an impersonal, aggregative, and
15 merely statistical manner. We have here a matter of principle,
16 and I think that Federal employees should not be compelled to
17 such self-disclosure. Apparently, more recent estimates of
18 minority employment have been done by surveys. But this should
19 be a matter of law.

20 As Chairman of the Subcommittee on Census and Statistics,
21 I am very familiar with procedures used by our Government to
22 obtain information. Our Subcommittee spent the last two years
23 investigating the methods employed by the Bureau of the Census
24 in collecting data from our citizens. During the course of my
25

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100B6

1 deep concern with, and indeed fear of, Government snooping.
2 Many of our citizens sincerely feel that "Big Brother" is
3 watching them.

4 Recognizing both the importance of this issue and the
5 genuine validity of the public's concern, our Subcommittee
6 developed legislation, H.R. 12884, which, first, substantially
7 strengthens the provisions of census law which guarantees the
8 rights and privacy of our citizens and, second, recognizes the
9 vital need for census statistics and does not, therefore, cur-
10 tail the right of the Government to gather, in the census,
11 information necessary for the benefit of all.

12 In other words, Mr. Chairman, we proved that it is possible
13 to protect the rights of our citizens without tying the hands
14 of our government officials so that they cannot carry on their
15 responsibilities.

16 Mr. Chairman, Federal employees do not surrender their
17 First Amendment rights when they enter Government service.
18 The right of every Federal employee to liberty with respect to
19 his political convictions and social beliefs, and with respect
20 to participation or nonparticipation in civic activities unre-
21 lated to his work, is as sacred as that of every other citizen.
22 The fact is that Federal employees have been compelled to
23 attend lectures or other orientation sessions in which they
24 were subjected to indoctrination regarding public affairs about

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which they have a right to be free to make up their own minds.

HBB7

1 As Senator Ervin questioned:

2 "Is there any reason whatever why a Federal civil service
3 employee should not have the same right to have his free-
4 dom of thought on all things under the sun outside of
5 the restricted sphere of the proper performance of his
6 work that any other American enjoys?"

7 In this connection I strongly protest against the forced
8 resignations of the two FBI employees -- Linda Jancu and
9 Christine Hoopes -- for participating on their own time in the
10 activities of an antiwar organization. And I protest against
11 the FBI compelling a third employee -- Janice Bush -- to give
12 up this outside activity as a condition of keeping her job.

13 I should point out here that H.R. 7199, unlike Senator
14 Ervin's legislation, does not exempt the FBI from the provisions
15 of the bill. I cannot find any justification for making FBI
16 employees or, for that matter, employees of CIA or NSA submit
17 to invasion of privacy. Those seeking to serve our Government
18 in those organizations should not be treated as second-class
19 citizens. Considering all the charges that have been leveled at
20 our so-called secret agencies lately, I strongly feel that this
21 is no time for the Congress to encourage the establishment of a
22 "thoughtpolice" system by exempting the FBI, CIA and NSA from
23 Federal Employees Bill of Rights legislation.

24 However, I have explicitly exempted from my bill the

1 the Federal Bureau of Investigation if the Director of each
2 respective agency, or his designee, makes a personal finding
3 with regard to each individual to be tested or examined that
4 such test or information is required to protect the national
5 security.

6 Mr. Chairman, not only have Federal employees been sub-
7 jected to indoctrination, but instances have been reported in
8 which they have been directed to take part in outside civic
9 activities on their own time. In the first place, their own
10 time belongs to them. It is the time for them to live their
11 personal lives as they want, and it is outrageous for the
12 Government to appropriate this time. Moreover, in compelling
13 its employees to participate in outside civic activities, the
14 Government utterly disregards their own views regarding such
15 activities. Such a violation of personal freedom is intolerable.

16 Federal employees and applicants have been subjected to
17 psychological interrogation and to questioning with a polygraph
18 or lie detector during which they were compelled to answer
19 questions about family relationships, about religious beliefs,
20 and about sexual activities. Admittedly, the Central Intelli-
21 gence Agency and the National Security Agency must determine
22 whether an individual could be blackmailed by foreign espionage
23 agents. Nevertheless, I do not believe that security precautions
24 either require or justify such personally degrading self-

Subcommittee of the House Post Office and Civil Service Committee, Mr. John A. McCart, Operations Director of the Government Employees Council, AFL-CIO, quoted as follows from a report of a special subcommittee of the Executive Council of the AFL-CIO:

"The use of lie detectors violates basic considerations of human dignity in that they involve the invasions of privacy, self-incrimination, and the concept of 'guilty until proven innocent'".

Federal employees have been virtually compelled to sign up for purchases of U.S. savings bonds and to contribute to charitable causes such as the United Givers' Fund. I certainly have not a word to say against Government bonds, against UGF, the Heart Fund, or any other such cause. But an employee's earnings are his own, and it is utterly objectionable for the Government to deprive him of his right to allocate his income as he himself determines.

Certainly no one gives such a requirement to Members of Congress.

Federal employees have been required to disclose to their agencies information about their personal finances; about their property, their sources of income, their debts. What I am talking about has nothing to do with income tax returns.

Federal employees have the same right to keep such information

1 items of such information may be required and justified in the
2 case of an employee who is in a position to make decisions
3 regarding the payment of funds owed to the Government or the
4 payment by the Government of money which it owes. But even
5 in this case, compelled disclosure should be limited to items
6 where a conflict of interest is suggested.

7 Mr. Chairman, protection of the constitutional rights of
8 Federal employees is a matter of justice to those employees.
9 But more than this, protection of the rights of Federal employees
10 has nationwide implications. The Federal Government is ever
11 increasing in numbers and widening in the scope of activities.
12 It possesses tremendous moral authority and operates in a way
13 which is more and more evident as an example to the State and
14 local governments and to corporate employers throughout the
15 country. But already in the areas of personal rights which I
16 have mentioned we find invasions of personal life and privacy
17 which more than suggest the totalitarian control of George
18 Orwell's 1984. I would hate to see such terms as "facecrime,"
19 "ownlife," "goodthinkful," "doublethink," and "crimestop" added
20 to the lexicon of our Government bureaucrats. Totalitarian
21 control of personal lives could well begin with the Federal
22 Government and thence become a condition of life to which
23 everyone would be subjected. This becomes increasingly possible
24 with development of technological means of control over people's
25 lives such as electronic data banking.

MMB

James Madison alerted us to the dangers of not protecting the rights of citizens when he said:

"I believe there are more instances of the abridgment of the freedom of the people by gradual and silent encroachments of those in power than by violent and sudden usurpations."

Invasions of personal rights must inevitably damage the operations of the Federal Government. The Government will serve the people best when the best qualified people serve the Government. But the best qualified people are those who are least likely to tolerate undue invasions of their personal lives and will be driven from public service to private industry when they find their privacy violated.

If a Government employee is deprived of his job by a snooping, power-hungry supervisor or on arbitrary, irrational or discriminatory grounds, such an action would be a tragedy. Even if technically we may not be able to say that his civil rights have been violated in the sense that he was denied the right to speak, we may legitimately speak of a violation of his human rights. After all, Mr. Chairman, the right to live, and the means to live -- a job -- are inexorably tied together for most human beings. Additionally, to deprive a Federal employee of his job because of the arbitrary decision of a faceless and nameless bureaucrat -- a job for which the Federal employee may have prepared himself for many years -- is to treat him like a

thing without human dignity.

I am sure that all of us here believe that the Federal Government and its employees are partners, not enemies, and that in the long run the success of each is dependent upon the success of the other.

Representation of grievances to the Executive Branch has not been effective. It is the Executive departments and agencies which presently have power to coerce employees, and in our American constitutional system we do not leave it to those who have power to limit themselves in its exercise -- we set up independent counterpower to limit such power. It is thus urgent, Mr. Chairman, that Congress intervene with its legislative authority to safeguard the constitutional rights of Federal employees.

To emphasize this point, John F. Griner, the outstanding President of AFGE and my good friend, stated in testimony before Senator Ervin's Constitutional Rights Subcommittee, that:

"Volumes of material revealing the magnitude of the problem have been presented before Committees and Subcommittees of both Houses of Congress. The printed hearings and documents on this subject already constitute a rather large library of abuses of law and order by governmental agencies regarding the safeguarding of the Constitutional rights of their own employees."

H.R. 7199 which is similar to Senator Ervin's bill, S. 782, which the Senate passed in the second session of the 91st Congress.

My bill does not cure all of the injustices to which Federal employees are subject nor am I wedded to every line or section of H.R. 7199. Rather I am trying to establish judicial and administrative remedies for certain violations of First Amendment rights of the citizen who may apply for Federal employment or who may work for our Government.

H.R. 7199 was designed to protect the Federal employee

- from being required to report his race, religion, or national origin;
- from being compelled to attend indoctrination lectures or meetings unrelated to his job;
- from being forced to take part in civic or other activities unrelated to his job, or from being forced to report on his participation in any such activities;
- from being required to submit to psychological interrogation or to questioning with a polygraph regarding family relationships, religious beliefs, or sexual relations;
- from being compelled to support in any way a candidate for elective office;
- from being coerced into buying Government bonds or contributing to any cause, however worthy;

1 - from being required to disclose his property, his sources
2 of income, or his debts.

3 Moreover, H.R. 7199 would assure to every Federal employee
4 the right to counsel in any proceeding which might result in
5 dismissal or disciplinary action. Further, it accords the
6 right to civil action in a Federal court for violation or
7 threatened violation of the Act. Finally, it establishes a
8 Board on Employees' Rights independent of the Civil Service to
9 hear complaints of violations of rights and with authority to
10 issue cease-and-desist orders to protect rights.

11 In all fairness, it should be pointed out that the Civil
12 Service Commission has attempted to eliminate some of the
13 privacy-invading practices of our Government. However, while
14 isolated cases of injustice may at times be corrected, they do
15 not establish a precedent for protecting the rights of all of
16 our Federal employees.

17 The inability of the Civil Service Commission to protect
18 the Federal employees from agency heads was very dramatically
19 brought to the attention of the Members of the Post Office and
20 Civil Service Committee recently when we were arrogantly told
21 by the Postmaster General, Mr. Blount, that Postal Service
22 employees have been ordered not to communicate with Members of
23 Congress.

24 Mr. Chairman, it is clearly the duty of Congress to pro-
25 tect the liberties of our Federal employees from the tyrannies

of the Executive Branch. Adlai Stevenson warned us of the slow but steady encroachment on the rights of our citizens by our Government when he said:

"If freedom had been the happy, simple, relaxed state of ordinary humanity, man would have everywhere been free -- whereas through most of time and space he has been in chains. Do not let us make any mistake about this. The natural government of man is servitude. Tyranny is the normal pattern of government."

Mr. Chairman, Federal employees have been peered at, inquired about, and spied upon -- without exaggeration they have become a naked society in a goldfish bowl.

Mr. Chairman, Victor Hugo's observation that nothing can stand in the way of an idea whose time has come is certainly relevant here. It is time to guarantee that our Government is run with authority without despotism.

Mr. Chairman, we urgently need a bill like H.R. 7193.

Now may I just supplement my prepared statement with this brief comment?

Mr. Hanley. Certainly.

Mr. Wilson. I have been contacted by the CIA, and there has been concern that has been expressed to me by the NSA and also by the FBI about the provisions of this bill. I sincerely feel that safeguards have been placed in the bill to protect these three agencies in any instance where the security of the

country is involved, or where something of a very vital nature of their particular responsibility is involved.

The last thing I would want to do would be to interfere, particularly with the work of the CIA. I feel this is a very important agency to the security of our country; and if the Committee should feel that any one of these agencies should be exempt, while I would disagree with them, I would want to do what the majority of the Members feel is proper.

I think that we should hear from these agencies, from spokesmen who can tell us why and what specific parts of the bill prevent them from doing their job, and why the safeguards that I feel we have put in are not satisfactory for the needs that they have.

Lastly, I would like to comment that there are 36 co-authors of the bill in the House. They range from Mrs. Abrug on the left to Mr. Rarick on the right. It is a very broad co-authorship. And then we have many of us in the middle who are co-authors of it. I think it demonstrates the importance of such legislation and the widespread support that it will receive.

Thank you very much, Mr. Chairman.

(The list of co-sponsors follows:)

Co-sponsors to H. R. 7199:

✓ Mrs. Abzug	New York
Mr. Anderson	California
Mr. Anderson	Tennessee
Mr. Aspin	Wisconsin
Mr. Badillo	New York
Mr. Begich	Alaska
Mr. Burke	Massachusetts
Mr. Byrne	Pennsylvania
Mr. Collins	Illinois
Mr. Corman	California
Mr. Danielson	California
Mr. Donohue	Massachusetts
Mr. Dowdy	Texas
Mr. Eilberg	Pennsylvania
Mr. Esch	Michigan
Mr. Fauntroy	District of Columbia
Mr. Forsythe	New Jersey
Mr. Halpern	New York
Mr. Harrington	Massachusetts
Mr. Hawkins	California
Mr. Hechler	West Virginia
Mr. Howard	New Jersey
Mr. Jones	North Carolina
Mr. McKinney	Connecticut
Mr. Melcher	Montana
Mr. Mikva	Illinois
Mr. Nix	Pennsylvania
Mr. Pepper	Florida
Mr. Pike	New York
Mr. Podell	New York
Mr. Rangel	New York
✓ Mr. Rarick	Louisiana
Mr. Rees	California
Mr. Rosenthal	New York
Mr. Roybal	California
Mr. St. Germain	Rhode Island

Mr. Hanley. Mr. Wilson, I want to commend you on your very excellent testimony, which certainly provides the Subcommittee with a wealth of information. Obviously you have done your homework quite well.

I believe that all of us are in accord with the suggestion in your statement that it is most important that the Congress intervene with its legislative authority to safeguard the constitutional rights of the Federal employees; and I think this is probably the gut of what we are doing. Hopefully, through this activity in the House we can register good faith with the people of America, the Federal employees, and all Americans in regard to this very important issue.

You have touched on the exclusion factor of the three agencies which you have referred to. This apparently is a very debatable thing, and we want very much to clearly assess both sides of the coin and hopefully ultimately render good judgment with regard to any consideration that might be given to either of the three agencies you referred to -- FBI, CIA, and the NSA -- each of whom have evidenced great interest in these proceedings and a major degree of apprehension.

If I may ask a question -- all of the bills now pending would allow appeals to the Board of Employees' Rights or the courts without first exhausting administrative remedies. Would you be in favor of requiring that the initial appeal be through normal grievance channels, with further appeal rights allowed

1 if the agency did not act within a reasonable length of time?
2 That would be 30, 45 or 60 days.

3 Mr. Wilson. I think within a reasonable time, yes, Mr.
4 Chairman. I suspect we should honor and protect that form of
5 appeal that we have had through the years. And it has not
6 always been successful. I would hope that it would not be
7 too long a period before a person would have the right to
8 appeal to the Commission or to the courts for relief.

9 Mr. Hanley. Federal employees now, as you know, have the
10 right to counsel in formal adverse action proceedings; and the
11 pending bills appear to broaden this right to any meeting,
12 whether it be formal or informal, which might lead to an adverse
13 action. That being the case, do you feel, as some Administra-
14 tion officials have stated, that serious difficulties might
15 arise from these provisions?

16 Mr. Wilson. Well, I do not believe so. I just feel that
17 we have got to move forward.

18 I know that probably every department and every agency of
19 Government is going to oppose this type of legislation. But
20 the only ones who have a leg to stand on really are the three
21 we have indicated before. I just suspect that all of them will
22 find something about it that they do not like, and try and under-
23 mine the legislation in any way they can by bringing up really
24 unimportant objections to it.

1 developed a lot of justification for all of these things. The
2 only thing I disagree with the Senator on is simply his exemption
3 of the FBI itself and not the CIA and NSA. I would suspect
4 if he was going to exempt one, he would exempt all three. I
5 would put FBI third in rank as to who should be exempted. I
6 just feel the most important of the three would be the CIA.
7 After all, they are supposed to be the principal intelligence
8 agency of the country and should be the only intelligence agency
9 in the country, in my opinion.

10 But I think that we have to do a lot of soul-searching and
11 a lot of serious thinking about the extent to which we would
12 apply this legislation to those three. But I do not think we
13 can hack away at the legislation too much just because of
14 objections being raised by other departments and agencies.

15 Mr. Henley. To reflect just once again on CIA and NSA,
16 the fact is that at the very outset when this individual is
17 being considered, or applies for employment, he or she is
18 advised of the procedure of that agency and agrees to concur
19 and cooperate with that procedure. That being the case, would
20 you pursue the thought that perhaps the constitutional right
21 might be violated in the course of this procedure, in the light
22 that this person has already agreed that he or she will submit
23 himself or herself to whatever procedure the agency requires?

24 Mr. Wilson. Well, I think that even if they agree to

25 submit to something, knowing that if they do not submit they

1 are not going to be able to qualify for the job, that the fact
2 that this procedure is followed could still have some consti-
3 tutional questions raised about it.

4 I think that what we should do is separate employees of
5 the three sensitive agencies that we have talked about. You
6 see, what they want to do is exempt their entire departments
7 or their entire agency; and I think it is acknowledged that
8 only a part of the employees are involved in the sensitive type
9 work we are talking about, where I think we should give the
10 director the freedom to determine whether or not the security
11 of the country or the sensitive type of their work is being
12 affected.

13 I think if it is ordinary stenographers or maintenance
14 people or people who are not involved in this type of work,
15 I just feel that there is no reason for them to have to be
16 subjected to this.

17 Mr. Hogan. Will the gentleman yield?

18 Mr. Hanley. Yes.

19 Mr. Hogan. Do not the ordinary stenographers type the
20 confidential reports of the sensitive people?

21 Mr. Wilson. I would suspect there may be some stenographers
22 that are related directly to the sensitive jobs; and then
23 there are others who do normal type work.

24 You are a former FBI man; you know more about it than I
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from the actual operations of the agency.

1 But it is a fact that -- at least in CIA -- that all of
2 the employees do not eat in the same restaurant. There is
3 a separation by classification of work that they do as to who
4 they talk to, who they have relationships with during their
5 working hours and so forth.

6 I think this separation could easily be done.

7 George mentions that you have tour guides who are employed
8 by the FBI -- I mean, there are many cases.

9 Mr. Hogan. Tour guides have other responsibilities in
10 the FBI. That is only a part-time function of their job. I
11 used to be a tour guide.

12 Mr. Hanley. At this point I will yield to the gentleman
13 on my right.

14 Mr. Hogan. I want to thank our distinguished colleague
15 for his testimony. I do not agree with all the things he
16 said, naturally.

17 I would like to allude, Mr. Wilson, to your objection
18 to the FBI's concern about the employees attending meetings
19 and working part-time for some of the protest organizations in
20 Washington, and I would ask a hypothetical question. Do you
21 think there is any justification for the FBI excluding its
22 employees from attending meetings of Black Panthers where they
23 plot sniping at police officers, attending meetings of the Ku
24 Klux Klan where they plot the lynching of Negroes, attending
25 meetings of the Weathermen of the SDS faction when they plot

1 bombing of banks and perhaps the Capitol Building itself,
2 whether or not they should be allowed to attend meetings of
3 the Communist Party, the Social Workers Party and the whole
4 parade of affiliated organizations, and still be active, day-
5 to-day FBI employees?

6 Mr. Wilson. Of course, this is part of their job. This
7 is not off-duty hours, and it is not a volunteer type thing.
8 These are --

9 Mr. Hogan. I mean in their part-time personal lives, do
10 you think FBI employees ought to be able to attend these kinds
11 of meetings or work part-time typing for these kinds of
12 organizations?

13 Mr. Wilson. You mean as members of those organizations?

14 Mr. Hogan. Well, in the instance we were talking about,
15 the FBI girls, they were doing typing at night for one of these
16 anti-war groups that were involved in the protest and dis-
17 ruptions in Washington. Now I am saying --

18 Mr. Wilson. Which anti-war group?

19 Mr. Hogan. I do not remember the name of it -- one of
20 the groups. It came out publicly in the press that they were
21 working, doing part-time typing.

22 My theoretical question is: Should they be allowed to
23 work during the day for the FBI and do part-time typing for
24 the Weathermen, the KKK and all the other organizations, the
25 Communist Party and others?

Mr. Wilson. I would agree that the organization would be the best there.

I would hope that an employee in my own office would not get involved in some of the organizations that you have spoken about.

Mr. Hogan. When some restriction on the outside activities of employees of the FBI is justifiable then? Is that what you are saying?

Mr. Wilson. Yes. In fact, I think we have federal laws that cover that type of thing.

Mr. Hogan. It is not a crime to be a member of the KKK or the Communist Party or the Social Workers Party or the Black Panthers. So it seems to me we have an area here that ought to be looked at very closely in the bill before us.

Mr. Brasco. Would the gentleman yield for an observation at this point?

Mr. Hogan. Yes.

Mr. Brasco. I think basically what we are talking about -- as an attorney -- sometimes if we take out one or two cases, the odd cases, and try to make a law surrounding the odd case, we almost invariably come up with bad law.

I think what we are talking about here is a question of relativity and balance in all of the things that we do; and I think what we are trying to get in this kind of a bill is a balance so that both sensitive agencies can be protected and

the odd case is not considered to be the rule.

Sometimes we get some unfortunate things that come up. It does not mean that every employee is handled in the same way or that an agency is abusive just because, you know, in the midst of the circumstances that we had last week, some employees were handled in that manner. I think if we dwell on that one subject matter, we are going to get off the track.

Mr. Hogan. I understand. But I do not think we ought to so restrict the government so it cannot protect itself from revolutionaries' practices.

Mr. Brasco. I am inclined to agree. But I am trying to get in the middle in terms of a balance because I think if we were to exempt something like those three people in that case, we are not really going to be talking about what the truth of the matter is.

Mr. Hogan. I understand. But my concern is that this might be an embryonic revolutionary organization. And I think it is within the province of the FBI to be concerned about something like this; it is in the national interest.

Similarly, I would be interested in knowing if Mel Laird's secretary were involved in an activity of this sort or organization, who may be involved in bombing the Capitol Building.

I think what I am saying is that under some circumstances it is a justifiable right on the part of the Federal Government, for the purpose of self-preservation, to be concerned about

some of the part-time activities of its personnel.

Mr. Brasco. Would the gentleman yield?

What I was trying to say is that I think Mr. Wilson, yourself and myself are in agreement on that point.

Mr. Wilson. Absolutely.

Mr. Brasco. What I was trying to indicate was if we pick out the case of these three young ladies, or the two young ladies, as opposed to the hundreds of thousands of possible situations that come up and use these three cases as a guideline of what is going on, I think we are going to get off the track.

Mr. Hogan. But he cited this in his testimony as justification for the law. That is why I brought it up.

I say this is not a good example because it is justifiable.

Mr. Brasco. I just thought we were going around the track, which I do not think really --

Mr. Hogan. I did not put it in his testimony. He did.

Mr. Wilson. I used this as an example of something I disagree with, as something that was done by the FBI. Certainly the law is justified by many more reasons than this one instance.

Mr. Hogan. Mr. Wilson, could you give us some examples or specific cases where NSA or CIA -- the FBI does not use polygraphs so in this instance you are not talking about them -- where they have asked about religious beliefs and sexual activities and family relationships?

1 examples of employees we could call upon as witnesses to give
2 specific cases where their rights had been infringed in this
3 way, I think it would be helpful.

4 Mr. Wilson. The complete file on this is Senator Ervin's.
5 He will be here. I have based my statements to this extent
6 upon Senator Ervin's statements and the research that has been
7 done by his staff. I am confident that he has names of
8 individuals and people because he had many of these people
9 before his own Committee.

10 Mr. Hogan. Mr. Chairman, I think it would be helpful if
11 we had some of the people who can tell us they were asked
12 questions about sexual activities, family relationships and
13 religious believes, you know, in this context.

14 Mr. Hanley. In the course of our hearings the intent is
15 that these people will appear.

16 Mr. Hogan. What I am concerned about is writing a law
17 that is so tight that it covers all kinds of instances that
18 are justifiable.

19 Now you obliquely referred to the business about employees
20 revealing the source of their income. Well, once a year I put
21 my own financial statement in the Record because I think my
22 constituents have a right to know whether or not I am engaged
23 in activities that might constitute a conflict of interest.
24 I think with many Federal employees we have the same type of
25 situation.

Now if an employee is a contracting officer with a Federal agency and he is deriving income from a company that he is letting contracts to, I think that is a legitimate right of the Government, to know about that. If he holds stock in Lockheed and he is in a position to make decisions on aircraft contracts with Lockheed, I think the Government has a right to know that.

So I think we have to write the law in such a way that these kinds of exemptions are covered. Do you not agree, Mr. Wilson?

Mr. Wilson. The bill does provide for exemptions that involve conflict of interest. Mr. Gould developed the legislation; that is the reason he is here with me.

On page 7, line 16, section (j), this is covered under the provisions of the bill. It repeats the prohibition, except when a conflict of interest arises with respect to certain employees.

Mr. Hogan. Who is the judge of whether there is a conflict of interest -- the Federal Government itself, or the employee? And how do they know unless they get the information in the first place?

Mr. Wilson. The head of the agency in all cases would be that person.

Mr. Hogan. But unless he gets the information on the person's income, how does he know whether there is a conflict

1 of interest?

2 Mr. Wilson. The bill does not prevent the agency from
3 investigating its employees, but they have to have adequate
4 information or proof to dismiss them or they cannot be dis-
5 missed for this purpose, unless there is a conflict of interest
6 that shows up in the investigation. There is nothing to pre-
7 vent them through the provisions of the bill from making what-
8 ever investigation is felt necessary.

9 It would only be in cases such as you have mentioned,
10 whether the Department of Defense might have an Assistant
11 Secretary or an employee who is dealing with the contractor,
12 and there is nothing in this to prevent the agency head to know,
13 in these cases where a conflict, a possible conflict of
14 interest might arise, to determine this information.

15 Mr. Hogan. So it is your reading of the bill that if
16 John Smith were a contracting officer whose responsibility
17 was to order pencils for the Federal Government and the head
18 of the agency or GSA or whoever it might be, would be able to
19 say, "Please give me an indication of all your personal assets,
20 the stock you own, the sources of your income;" and the employee
21 said, "The Wilson bill prohibits that and I do not have to tell
22 you anything."--then where are we?

23 Mr. Wilson. That is not the intent of the bill.

24 Mr. Hogan. Okay. I think we ought to make sure the bill
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does cover those situations where he does own stock in the

1 Alexanderoga Pencil Company.

2 Mr. Wilson. I think the Jack Anderson column this morning
3 brought up quite an important point, too. Who does the money
4 belong to that the Director of the FBI receives for his books
5 that he did not write? Does it belong to the taxpayers?
6 Does it belong to him? Maybe we should be sure that this thing
7 is free enough so that we can look into the Director of the
8 FBI a little bit and find out what his extracurricular activities
9 have been.

10 Mr. Hogan. I have no further questions, Mr. Chairman.

11 Mr. Hanley. Thank you, Mr. Hogan.

12 Mr. Brasco?

13 Mr. Brasco. Mr. Wilson, I would like to join the Chairman
14 of the Subcommittee in commending you on a fine statement.
15 I think basically -- and obviously, I do not want to speak for
16 the entire Committee -- but I think basically there is an
17 agreement that the rights of Federal employees should be pro-
18 tected from undue invasions of privacy.

19 I think probably the most volatile and controversial area
20 that we will get into in this bill is whether or not the employees
21 of the three intelligence agencies that we spoke about -- the
22 CIA, the National Security Agency, and of course, the FBI --
23 should be treated the same as other Federal employees in con-
24 nection with this bill.

1 hit it in your testimony -- is that there has to be some kind
2 of balance here. I think we all recognize the sensitivity of
3 the work that is conducted by these agencies, and that is what
4 I was alluding to before in connection with the case that you
5 cited about the three young ladies. I do not think we should
6 base a determination on what can be and most probably are some
7 isolated instances. But I think the overall balance is important.

8 The only thing I am concerned about, and what I am really
9 wondering is, when we try to strike a balance in these sensitive
10 areas, I hope we are not really saying that someone has a
11 constitutional right, say, to be employed by any particular
12 agency, whether or not that individual has the qualifications
13 for performing the employment. Very simply, we would not want
14 a guy flying a plane -- at least, I would not want to fly with
15 him -- unless he knew how to be a pilot. And I think in these
16 sensitive agencies we are talking about that probably the
17 qualifications for the individuals are much more stringent,
18 physically and psychologically, in terms of being capable to
19 perform their duties.

20 With that in mind, I think that probably I am getting
21 closer -- to be quite candid with you -- to the position where
22 I am wondering whether or not we should just blanket these
23 agencies in, in these very sensitive areas; and I speak of my
24 own particular experiences as a former assistant chief of what
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26 is known as the "rackets bureau" in the DA's office in Brooklyn.

1 and I can agree with Mr. Hogen that the guy that is carrying
2 the file on one of the most complicated frauds or murder cases
3 not
4 that the office has is just someone who is brought in as an
5 employee who may have no other duties other than to take the
6 file from the courtroom over to the central repository; and I
7 think with those kinds of situations involved, you become --
8 and that is the difficulty here -- you become involved with a
9 totality of sensitivity which, at least my particular thought
10 at this particular time is that it probably pervades everyone
11 that is involved in the agency. It is kind of difficult to
12 separate them.

13 I really did not have any questions.

14 I think you did a good job, and I think in your testimony
15 you quite obviously have the same thoughts in your mind in
16 trying to find what kind of a balance can be or should be
17 drawn in these sensitive areas so that we do not, obviously,
18 only create a climate where the agency cannot do its primary
19 function.

20 Mr. Wilson. Mr. Brasco, Mr. Chairman, politics, as we
21 know, is the art of compromise. I come here with a bill we
22 spent considerable time on trying to develop. I recognize
23 there is no important piece of legislation that is not subject
24 to amendment or to modification.

25 The important thing is that if there is a serious problem

1 and do something and we approach the thing properly.

2 I want to assure you, Mr. Hogan, that our goals are the
3 same. I would not do anything to thwart or interfere with or
4 do anything at all with the three agencies that we were talking
5 about, to interfere with the responsibility that they have.
6 And yet, I would like to feel that every employee who is not
7 involved in sensitive type work would have a little more free-
8 dom than apparently what the policies are that have been handed
9 down from year to year.

10 It does not make any difference what Administration there
11 is. It happens to be part of the bureaucratic system we have.
12 And I had legislation introduced like this in the previous
13 Administration. This is not an instance of trying to pinpoint
14 any particular Administration.

15 Mr. Hogan. Would the gentleman yield?

16 Mr. Brasco. Yes.

17 Mr. Hogan. There is no one in the Congress who represents
18 more Federal employees than I, and I assure you I share your
19 concern about protecting them from unwarranted intrusions.

20 I think we are both on the same track -- to use a trite expression:
21 to make sure we do not throw the baby out with the bath water.

22 Mr. Hanley. Mr. White?

23 Mr. White. Thank you, Mr. Chairman.

24 Mr. Wilson, you have certainly brought a very thought-

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provoking bill up to us, and I think it has many good sections,

from just leafing through it.

However, I do think there are some very impractical sections, too. I think some of the sections work against the interests of these United States.

Mr. Wilson. For example?

Mr. White. I am going to get to that.

I think you are trying to, in a sense -- you are not trying to, but I think you in substance give a blanket protection to some who do not deserve a protection while you are trying to protect those who are innocent or who do deserve protection. I think we are living in troubled times, personally, and I think you can see an infusion in some instances in the Government of people who do not have the greatest interest of this Government in their minds.

I would prefer in your bill, or any bill that we report, that the Board that you set up be given broader powers, be given the powers to prescribe the types of questions that can be asked by an employer, be given investigative power so they themselves can not only look at violations of this act but also investigate infractions by the employees of what would be good conduct as an employee, and conflicts of interest.

I do not know why you do not include the Congress in this. I do not believe you do. And if the bill were good for the Executive department, surely it ought to be good for the Congress, too. But I think the reason we do not want to apply this to

Congress is because as employees and employers, each of us, we know we would have to ask certain questions when we employ people.

For instance, I know that every Congressman who works late hours -- and we all do -- would like to know what children are at home because if a woman is going to have to worry about her small children all the time, you know, she is not going to have her mind on her job as much as she might otherwise.

There are all kinds of things you might have to ask as far as the security of your office and as far as the applicability of their efforts towards your job.

Now talking about some examples -- and these are just off the top of my head, and some are very facetious perhaps, but they perhaps point out what could happen.

For instance, on page 3 you say they should not be required to attend any sessions that are not pertaining to their positions or their particular skill. Suppose we were in war-time? I can think of all kinds of reasons why you would want people to go to drills, go to instructions in the event that the United States Capitol were threatened to be bombed or gassed. I would think you would want them to attend. And I think it would be a dereliction of their general duties as a citizen not to attend these particular meetings.

Mr. Wilson. If they are members of a reserve unit, this is part of their general duties.

Mr. White. I am talking about the employees.

Now suppose you have a man that is walking around and propositioning all the secretaries.

Mr. Brasco. What was that word?

Mr. White. "Propositioning."

Do you mean the employer cannot ask the man about it, cannot bring it to his attention? Because you say you cannot talk about any matters of personal relationships or matters with respect to sexual matters. I would think this would be definitely and directly in accordance with keeping good order in your office. You would have to ask that kind of question.

I have already mentioned the matter of asking about children at home.

On page 6 you say they cannot be obliged, or you cannot talk to them about fund drives. But that would eliminate your fund drives, your United Fund and everything else.

Mr. Wilson. It does not say they cannot talk to them. It says they cannot pressure them and require quotas or anything of that sort.

Mr. White. But by taking the prayer in school proposition, if you say that a group of people, an organization, should meet a certain quota without directing it towards any individual employee, what you are doing is putting them under a certain compulsion, and that would probably be unconstitutional under this section. You cannot have a fund drive under this

1 section.

2 Mr. Wilson. You know what the problem is that we have had
3 there were contests between governmental agencies as to who
4 would have the highest percentage or the greatest dollar volume
5 and they would get honored by the President, and this was
6 particularly true under Mr. Johnson. They would get honored by
7 the success of the fund drives.

8 Well, this caused Mr. O'Brien and other people in the
9 administration to put a real iron hand on employees.

10 Mr. White. I am not saying I disagree with you. I think
11 maybe that is a good result. I think we should recognize
12 that it probably would eliminate that kind of drive.

13 You say at one point on page 6, in section (i) you speak
14 of financial disclosures, and then you use the words "any
15 civilian employee of the United States." Well, then you do
16 say "serving in the department or agency to disclose..." Maybe
17 you do limit it. But I was thinking that that applied to
18 administrative assistants who have to disclose their financial
19 conditions under our laws. But if you do limit it to agencies,
20 then you do not.

21 But why to the Executive Department and not to Congress
22 then, again I say.

23 These are some of the things that I have just spotted
24 slipping through here.

1 that we feel should be designated to file the same financial
2 statements that we are required to file.

3 Mr. White. They have to file about themselves though.
4 Now you are saying that the Executive departments cannot make
5 any of their employees make any financial disclosure, but you
6 are insisting by law that the --

7 Mr. Wilson. I think if you read through each section
8 thoroughly, you will find that in those cases where there may
9 be reasons for this type of information to be known, it is
10 covered and protected. We have tried to do that in every
11 instance.

12 It does not prohibit voluntary contributions to fund drives;
13 it does not prevent people from voluntarily going to meetings
14 on off-duty hours that have nothing to do with their job.
15 It is just like this prayer thing. The Supreme Court did not
16 prohibit voluntary prayer in the public schools. A lot of
17 people say it did.

18 Mr. White. But they prohibited prescribed prayer.

19 Mr. Wilson. They certainly did, and they should have.

20 Mr. White. I know my time has expired, but I wonder if you
21 could answer this one question. Why did you not include
22 Congress and the Congressional employees?

23 Mr. Wilson. I have no objection to including Congress in
24 here, none at all. Congress, all of our staff employees -- there

The problems that have been raised have been raised through government employee organizations, and it has been related principally to Civil Service employees, and this is the reason why it was limited to this.

I would have no objection at all to bringing the Legislative Branch into the provisions of the bill.

Mr. White. Thank you, Mr. Chairman.

Mr. Hanley. Again, Mr. Wilson, many thanks for your appearance. Your testimony was excellent. And as you have so well stated, the legislation which you have introduced is a vehicle for consideration by the Subcommittee, hopefully by the Congress, and certainly will be subject to compromise.

At this point I would be delighted to have you join us in your respective place on this side of the table.

Mr. Wilson. Thank you very much, Mr. Chairman.

Mr. Hanley. Our next witness this morning is Congressman Spark Matsunaga from Hawaii, a member of the House Rules Committee.

We are delighted to have you here this morning.

STATEMENT OF THE HONORABLE SPARK M. MATSUNAGA,
REPRESENTATIVE IN CONGRESS OF THE UNITED STATES FROM
THE FIRST DISTRICT OF THE STATE OF HAWAII.

Mr. Matsunaga. Mr. Chairman, Members of the Subcommittee, as a former member of the House Post Office and Civil Service

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Committee, it gives me great pleasure to return now as a witness.

1 and particularly when my former colleague on the same Committee
2 serves as the Chairman of this Subcommittee.

3 Mr. Chairman, Members of the Subcommittee, the purpose of
4 the bill which I and many others have introduced, mine being
5 H.R. 228, is to prohibit indiscriminate or arbitrary Executive
6 Branch requests or requirements that employees and, in certain
7 instances, applicants for government employment:

- 8 - Disclose their race, religion or national origin;
- 9 - Attend Government-sponsored meetings and lectures or
10 participate in outside activities unrelated to their
11 employment;
- 12 - Report on their outside activities or undertakings
13 unrelated to their work;
- 14 - Submit to questioning about their religious beliefs
15 and practices, personal family relationships or sexual
16 attitudes and conduct, through interviews, psychological
17 tests, or polygraphs; and
- 18 - Support political candidates or attend political meetings.

19 The bill would make it illegal to coerce an employee to
20 buy bonds or make charitable contributions. And I repeat:
21 Coerce any employee to buy bonds or make charitable contri-
22 butions.

23 It would prohibit officials from requiring him to disclose
24 his own personal assets, liabilities, or expenditures, or those
25 of any member of his family, unless, in the case of certain

1 specified employees, such items would tend to show a conflict
2 of interest.

3 It would provide a right to have counsel or another person
4 present, if the employee wishes, at an interview which may lead
5 to disciplinary proceedings.

6 It would accord the right to a civil action in a Federal
7 court for violation or threatened violation of the Act, and
8 it would establish a Board of Employee's Rights to receive and
9 conduct hearings on complaints of violation of the Act, and to
10 determine and administer remedies and penalties.

11 I will not take up the Subcommittee's time by reciting
12 the litany of abuses of Federal employee rights: of workers
13 pressured to contribute to political fund-raising affairs,
14 of paying into religious beliefs or sexual attitudes, of
15 employees daring to question the conduct of superiors who then
16 find themselves charged with mental instability. Of particular
17 recent interest, however, is the discussion in the press of
18 a 53-page "personality assessment questionnaire" currently
19 being foisted upon certain government employees. It is hard
20 to see the legitimate governmental need for answers to such
21 questions as "Do you cross your legs and if so, which one goes
22 on top?", and "Do you bite or cut off the end of a cigar?"

23 Mr. Chairman and Members of the Subcommittee, inquiries
24 of this type serve no useful purpose and merely infringe upon
25 the employee's freedom of thought, freedom of speech, of private

1 action or inaction. The exercise of these basic liberties
2 should not depend, as they do now, on the discretion of what-
3 ever government official sits at a particular desk at any given
4 time. Congressional direction is sorely needed.

5 My own bill and the similar ones now pending before the
6 Subcommittee represent a bipartisan attempt to supply that
7 direction. The problem exists from Administration to Adminis-
8 tration, regardless of the party in power, and is recognized
9 as needing some solution in the platforms of both major parties.

10 This is the third Congress in which I have sponsored
11 legislation to protect the privacy and other constitutional
12 rights of Federal employees. I am particularly pleased, there-
13 fore, that this distinguished Subcommittee has begun hearings
14 at such an early date on this important legislative proposal.
15 I urge the Subcommittee to swiftly approve, and work for passage
16 of, a strong measure, so that the more than three million
17 Americans who happen to work for the Federal Government can
18 enjoy fully, and without fear of any retribution, the rights
19 guaranteed us all by the Constitution.

20 Thank you, Mr. Chairman.

21 Mr. Chairman, as much as I would like to remain to answer
22 your questions, we have, as I understand, following me a real
23 expert on this matter, who has spearheaded this move for the
24 adoption of this legislation -- Senator Ervin. And I am now
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overdue at a Rules Committee meeting, which committee, if it

1 fails to function, will cause the lack of functioning of the
2 House on the Floor.

3 Unless you have a brief, first question, I would like to
4 excuse myself and to go to the Rules Committee meeting.

5 Mr. Hanley. We certainly want, and it is the intent of
6 the Subcommittee, to accommodate your schedule, Spunk. Again,
7 we deeply appreciate your appearance.

8 I have just one question. Will you tell us the name of
9 the agency which has circulated the 53-page questionnaire?

10 Mr. Matsunaga. Senator Ervin, at the hearing before the
11 Senate Committee, presented a copy, according to press reports,
12 and I believe that question might better be put to Senator
13 Ervin, who will follow me.

14 Mr. Hanley. Thank you again for your appearance and
15 your interest in this legislation. It is a pleasure to have you
16 with us.

17 Mr. Matsunaga. Thank you, Mr. Chairman.

18 Mr. Hanley. Our next witness, Congressman Murphy, has
19 been detained on Congressional business in New York City.
20 He is submitting printed testimony.

21 STATEMENT OF THE HONORABLE JOHN M. MURPHY, REPRESENTATIVE
22 IN CONGRESS OF THE UNITED STATES FROM THE SIXTEENTH
23 DISTRICT OF THE STATE OF NEW YORK.

24 (The prepared statement follows:)